

CHAPTER I – MODEL FLOODPLAIN ORDINANCES

Chapter Summary

Community participation in the National Flood Insurance Program (NFIP) requires the adoption and enforcement of floodplain management measures that are compliant with Section 60.3 of the NFIP regulations. A floodplain management ordinance must meet the requirements of federal and state floodplain management laws. In Maine the Mandatory Shoreland Zoning Act and Natural Resources Protection Act also play significant roles in managing floodplain development. Maine law dictates the manner by which ordinances are adopted. If your community does not have a building permit system in place, your floodplain ordinance must establish one. It is conceivable that the floodplain regulations can be integrated into the local zoning ordinance.

A. Overview of Participation in the NFIP

The organizational relationships of federal, state, local, and private sectors with regard to the National Flood Insurance Program (NFIP) forms a unique set up of overlapping partnerships. Each group of players is necessary to make the NFIP work.

Local Government

The local group means the community. This can include just about any political subdivision other than the state. Towns, cities, counties, Indian tribes, and special districts are included.

Federal Government

The Federal government provides federally backed flood insurance in exchange for good floodplain management, via an ordinance that regulates all development in the special flood hazard areas of a community. These flood hazard areas have been identified on a map which the federal government has provided and also paid for. Congress authorized the Federal Emergency Management Agency (FEMA) through the Federal Insurance Administrator to identify the flood hazard areas, make maps available and make insurance available at reasonable rates which was heretofore unavailable. There are no known private companies that offer flood insurance without the backing of the NFIP. There have been a few occasions when a private insurer has provided flood insurance outside of the NFIP but these ventures have been few and far between. Most drop the coverage when it is found to be too costly. Flood insurance is not available in communities that do not participate. The Federal government will make flood insurance available only in those communities that agree to adopt and enforce an ordinance.

State Government

In the overall organization of the NFIP, FEMA has asked each state to appoint a coordinating agency and coordinating officer. In Maine, the state coordinating agency is the State Planning Office (SPO). The State NFIP Coordinator, also known as the State Floodplain Management Coordinator, and the Maine Floodplain Management Program are housed within the SPO Community Assistance Team.

The State's responsibilities are outlined in the NFIP Regulations at 44 CFR §60.25.

State Responsibilities:

- Enabling legislation to allow the local units of government to adopt ordinances
- Encourage and assist communities in qualifying for participation
- Ordinance assistance
- Community assistance
- Coordination of local floodplain activities
- Flood Insurance Study and mapping assistance

- Monitoring [Community Assistance Contacts/Community Assistance Visits]
- Establish minimum state standards
- Mitigation
- Training

The state's primary role in the Program is to provide the authority for communities to adopt the proper ordinances. It is also the state's role to provide technical assistance to the communities and to provide training. Two functions that receive a lot of emphasis are: the Community Assistance Contact (CAC) and the Community Assistance Visit (CAV). Many of Maine's municipalities have been on the receiving end of one or the other, or in some cases both. A visit is exactly what it implies. Someone representing FEMA, usually the state, comes to the community and sits down with the local officials and reviews the local floodplain management program as it relates to the NFIP. The CAV is not intended to be a punitive action, but rather a method of offering assistance and guidance to the participating community if needed. This visit is followed with a report to FEMA and a letter to the community with recommendations or in some cases noting the good job that the community is doing. A CAC is generally a phone call to inquire about the administration and enforcement of the floodplain ordinance and ask if the local officials are having any difficulties. It may result in a follow-up CAV.

The Maine Floodplain Management Program is now averaging over 2,700 calls for assistance per year from communities, citizens, lenders, surveyors, insurance agents, and the public. The State Program maintains copies of each community's ordinance and copies of their FIRMs. It also maintains a supply of publications and videos. If you need any floodplain management assistance, the Maine Floodplain Management Program is here to help.

The Community's Role

Because states have empowered communities to regulate land use, and because Congress believed it was more appropriate for development to be regulated at the local level, the NFIP was designed to function as a Quid Pro Quo type of program. Congress would underwrite flood insurance in return for the community's adoption of regulations for development in floodplains.

The vast majority of communities with floodplain management ordinances, have them because they wanted to join the National Flood Insurance Program. In order for your community to participate in the NFIP it must do three things;

- Fill out an application (see Appendix H);
- Adopt a resolution (see Appendix H); and
- Adopt floodplain regulations that at least meet minimum NFIP standards (see model ordinance beginning on page 1-6).

The NFIP Application

Each community enters the program on its own volition. [The community's responsibilities are outlined in the NFIP Regulations at §59.22.]

The NFIP Application asks for the following information about the town. See Appendix H for a copy of the application.

- Community name
- County and State
- Chief Elected Official
- Address
- Program Coordinator [typically the Code Enforcement Officer]
- Location of repository for public inspection of maps [typically in the town hall in the Code Enforcement Office]
- Estimates of:
 - Community population/floodplain population

- Number of 1-4 Family structures in community/floodplain
- Number of small business structures in community/floodplain
- Number of all other structures in community/floodplain

In reviewing the many applications on file, a common problem is that many of the towns did not provide reasonable estimates when it came to filling in the boxes asking for the number of people and structures in the floodplain. It is very important to provide the best information reasonably possible. While it may not be practical to do an actual count of structures, which some towns have done as part of the comprehensive planning process, it should not be too difficult to establish a reasonable estimate.

The Resolution

The second step the community must accomplish is the adoption of a resolution. For towns with a town meeting form of government, this action must be done at the town meeting. The vast majority of Maine's towns adopted the resolution and joined the Program in the mid 1970's. It is a good idea to go back and look at that resolution to see what promises the town made, and what is still expected of the community today.

The Community also must adopt a Resolution agreeing to:

- Adopt and enforce a floodplain management ordinance that meets the minimum standards of the program. [See Section C of this chapter which discusses the floodplain management ordinance.]
- Assist the FIA in delineating the SFHA.
- Maintain for public inspection information needed in determining risk premium rates, i.e. elevation certificates and permit information.
- Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map and identify risk areas and cooperate with neighboring communities with respect to the management of adjoining floodplains.
- Notify the FIA of boundary changes or changes in legislative authority.

The required wording of the resolution is fairly specific. A copy of the model Resolution can be found in Appendix H.

Biennial Report

The community has a responsibility to FEMA under 44 CFR 59.22(b)(2) of the federal regulations to submit a Biennial Report to the Federal Insurance Administrator. On the form provided, the community must show the number of permits and variances issued for the prior two years. The community is also asked to update its estimated population and structure figures both in the entire town as well only in the floodplain. Although the population and structure information may not seem important, this information is used nationally to gauge the Program's effectiveness, for example: how many structures are at risk versus how many structures are covered by insurance. These figures also have other program implications as well. See the sample Biennial Report in Appendix K.

B. Basis for Regulation

More than 400 communities in Maine, or about 93%, are participating in the NFIP. They have agreed to adopt and enforce an ordinance regulating floodplain development. It is the ordinance, therefore, which forms the basis for a community's floodplain regulatory program.

The Model Ordinance in this manual has been developed for use by Maine municipalities. The ordinance in this manual is different from the one in the last manual. It has been updated and refined based on feedback the Maine Floodplain Management Program has received from the communities that have found difficulties in administering their current Floodplain Management Ordinances. The review and revision process is ongoing. The Maine Floodplain Management Program will continue to revise and improve the model ordinances based on comments by the towns that offer constructive input.

There are now five different model ordinances, depending on the type of maps a community has been given by the Federal Government identifying the hazard, and whether or not the community is coastal. The model ordinances meet all the minimum requirements of the National Flood Insurance Program (NFIP) regulations (originally published in the Federal Register on October 26, 1976, re-designated as 44 CFR 59-60 May 31, 1979, and revised through November, 1997).

Even if you already have a floodplain ordinance in force, we urge you to read this chapter carefully. References to specific sections in the ordinance are made throughout the manual. The more familiar you are with the ordinance, the better you will understand the regulatory requirements.

C. Ordinance Adoption

State Law Requirements

Title 30-A governs how ordinances are adopted. The normal procedure is delineated in Title 30-A MRSA § 2523. This section requires the proposed ordinance to be attested by the Municipal Clerk as a true copy of the ordinance as certified by the municipal officers and then posted where the municipal warrant is posted at least 7 days prior to the town meeting or city council meeting. In addition, copies of the ordinance must be available at the municipal office at least 14 days before the meeting as well as at the town or city council meeting for examination by interested citizens. The warrant article **must** read: "Shall an ordinance entitled "Floodplain Management Ordinance for the Town/City of _____, Maine _____, 20__" be enacted?" Once enacted, the ordinance shall be on file with the municipal clerk and shall be accessible to any member of the public. Copies shall be available at a reasonable cost.

If the ordinance is to be voted on by secret ballot then the procedures spelled out in Title 30-A MRSA § 2528, subsection 5 must be adhered to. The statute requires that at least 45 days before the vote the municipal officers must order that the ordinance be voted on secretly. At least 17 days before the vote the municipal officers must post notice of a public hearing in the same manner that a town meeting warrant is posted. Posting shall include the ordinance together with the time and place of the hearing. At least 10 days before the vote the municipal officers must hold a public hearing on the proposed ordinance, and the ordinance language must be available. If any substantive changes are made another hearing must be held prior to the vote.

Repeal of or amendments to an existing ordinance

If the municipality already has a floodplain ordinance or ordinance provisions it wishes to get rid of, the best way to do that is to include language within the proposed ordinance to this effect:

"This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended)."

Language to this effect is included as Article XV (Article XIV in the b, c, and d non-coastal models) of the Model Ordinance.

If the municipality wants instead to amend an existing ordinance, such as amending the zoning ordinance to include floodplain provisions, then the procedures outlined above for enactment of an ordinance shall be followed exactly. The ordinance title will, however, be different. In this case the ordinance should be called: "Floodplain Management Amendments to the Zoning Ordinance of the Town/City of _____, Maine enacted on _____, 20__."

D. Model Ordinance for Municipalities

What follows on the next several pages is one version of the Model Floodplain Management Ordinance. As mentioned above there are five different versions of the model because the NFIP has different requirements for municipalities depending upon their maps and location. Communities whose maps do not show base flood elevations, and who do not have detailed studies, have less detailed ordinances than

communities whose maps contain more information. The ordinances are designated as "b" riverine, "b" coastal, "c and d" riverine, "c and d" coastal, and "e" ordinances. The "b" ordinances are used by communities which do not have detailed studies or elevations on their maps. The floodplains on those maps are designated only as "A" zones. The "c and d" ordinances are used by communities whose maps show floodplain elevations and almost always have detailed studies. Some of those communities also have floodway maps and floodway information in the Flood Insurance Study. The "e" ordinance is used by coastal communities whose maps show floodplain elevations and velocity zones (V Zones) and almost always have detailed studies. The ordinances for coastal communities need to take into account the special requirements for coastal high hazard areas, which inland communities, with only riverine flooding, do not.

The ordinances are cumulative. In other words, no essential information is changed or deleted as you move from a "b" ordinance to one of the others; just added to.

How can I tell which ordinance is right for my town?

The ordinance requirement is determined by the kind of flood hazard identification map that has been provided to your community by the Federal Insurance Administrator. Early maps, before 1979, were done by the Department of Housing and Urban Development (HUD). Maps from 1979 to present were done by the Federal Emergency Management Agency (FEMA).

The more detailed the flood maps, the more detailed the community's floodplain management regulations must be. The National Flood Insurance Program Regulations at 44 CFR, Part 60.3 further tie the type and scope of minimum local regulations to the types of map.

Your community should adopt a 60.3 (b) Floodplain Management Ordinance if the effective Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map for your town:

- is an 11" x 17" "Flat Map" also known as an "Approximate Method Map" without base flood elevations. The Special Flood Hazard Areas (SFHAs) are identified with a capital letter A without any number following the letter (i.e., A Zone).
- is a Z fold map without any base flood elevations (**if there are any flood elevations anywhere** on any of the map panels, even though the majority of the zones are A zones then it is **not** a (b) community).
- is listed in the FEMA Community Status Book as Minimally flood prone (an M is next to the community's map effective date in the Status Book).

Your community should adopt a 60.3(c) Floodplain Management Ordinance if the effective Flood Insurance Rate Map for your town:

- is a Z fold map with base flood elevations having Special Flood Hazard Areas identified as an AE, A1-30, AH, and/or AO Zone.
- **if there are base flood elevations anywhere** on any of the map panels, your community needs this ordinance, even if some panels may not have AE, A1-30, AH or AO and all zones are labeled on the panel as A.
- has no identified regulatory floodway or coastal high hazard area.

Your community should adopt a 60.3(d) Floodplain Management Ordinance if the effective FIRM for your town:

- has any Flood Hazard Areas identified with an AE, A1-A30, AH and/or AO Zone, and

- has the "floodway" portion of the floodplain delineated on the FIRM with a cross hatched pattern, or
- has a separate set of Flood Boundary and Floodway Maps delineating the floodway portion of the floodplain as a non shaded area.

Your community should adopt a 60.3(e) Floodplain Management Ordinance if the effective FIRM for your town:

- has any coastal Special Flood Hazard Areas identified as a VE or V1-30 Zone

Community officials should make sure they use the proper model when preparing their own ordinance. Contact the State Floodplain Management Program at the State Planning Office if you need assistance in determining which ordinance is required for your community. The models are written for municipalities with a town meeting form of government, but can be adapted for cities or towns with a council form of government by substituting the appropriate language.

The ordinance is comprised of fifteen articles and it assumes a building permit system does not already exist in the community. If your community has a building permit system in effect, and if the preference is not to have two separate permit systems, the model ordinance can be adapted to fit into the original, permit-establishing ordinance.

For the sake of practicality, we have chosen the "e" ordinance, which is the most detailed, to use as an example in this chapter. The ordinance, as presented in this handbook, is accompanied by commentary explaining the provisions and referencing federal and state regulations. The commentary also describes how to fill in the blanks, and points out those portions of the coastal model which are not applicable to inland communities. The text of the ordinance appears on the left side of the page, and the commentary is on the right side.

The Maine Floodplain Management Program in the State Planning Office maintains five different versions of the model ordinance and can provide a customized copy for your community, upon request. Assistance in modifying the model ordinance to suit your community is available from your regional council or the Maine Floodplain Management Program. Staff are also available if your community needs help in determining the appropriate terminology to fill in the blanks appropriately for your community. The ordinance should be reviewed by the City or Town Attorney prior to adoption since the attorney is the person responsible for defending any challenges to it.

If your community makes changes to the model ordinance, it is imperative that revisions be reviewed by the Maine Floodplain Management staff or FEMA prior to adoption. There have been Maine communities that have spent a tremendous amount of time and resources to develop their own ordinance, only to find out after it was adopted that it did not meet the minimum NFIP requirements. A community could be subject to suspension from the NFIP if lesser standards are adopted. If you have any questions, please contact the staff of the Maine Floodplain Management Program, your regional council, or FEMA, all of whom are available to provide assistance to community officials.

The model Floodplain Management Ordinances are also available on the State Planning Office web site at: www.Maine.gov/spo/flood. Under the "floodplain management" heading, choose "ordinances and permit forms". Carefully follow the instructions for choosing the appropriate ordinance.

FLOODPLAIN MANAGEMENT ORDINANCE

FOR THE

TOWN/CITY OF _____, MAINE

ENACTED:

Date

CERTIFIED BY:

Name

Title

Affix Seal

